

§218.6

VACAPES Range Complex Comprehensive Report, the Annual VACAPES Range Complex Exercise Report, or the Annual VACAPES Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports shall be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(j) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§218.6 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §218.1(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §218.7 or a renewal under §218.8.

§218.7 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in §218.8.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

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(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §216.106 of this chapter and §218.7 for the activity identified in §218.1(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under §218.6 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under §218.5(c) through (i); and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §218.4 and the Letter of Authorization issued under §216.106 of this chapter and §218.7, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §216.106 of this chapter and §218.8 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the

Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from VACAPES Range Complex or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§218.5(j)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§218.5(d))).

(4) Results from specific stranding investigations (either from the VACAPE Range Complex Study Area or other locations, and involving coincident explosives training or not involving coincident use).

(5) Results from general marine mammal and sound research (funded by the Navy or otherwise).

(6) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§218.9 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §216.106 of this chapter and §218.7 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under §218.8, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §218.2(c), a Let-

ter of Authorization issued pursuant to §216.106 of this chapter and §218.7 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart B—Taking Marine Mammals Incidental to U.S. Navy Training in the Jacksonville Range Complex (JAX Range Complex)

SOURCE: 74 FR 28365, June 15, 2009, unless otherwise noted.

§218.10 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the JAX Range Complex Operation Areas (OPAREAs), which are located along the southern east coast of the U.S. The two principal OPAREAs within the JAX Study Area are the Jacksonville OPAREA and the Charleston OPAREA (sometimes referred to collectively as the JAX/CHASN OPAREA, or simply the OPAREA). The northernmost point of the JAX/CHASN OPAREA is located just north of Wilmington, North Carolina (34°37' N) in waters less than 20 m (65.6 ft) deep, while the easternmost boundary lies 281 nm (518.6 km) offshore of Jacksonville, Florida (77°00' W in waters with a bottom depth of nearly 2,000 m [1.243 mi]).

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section: